

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ARCONIC INC.,	:	
	:	CIVIL ACTION NO. 2:17-cv-1434-JFC
Plaintiff,	:	
	:	
vs.	:	
	:	
NOVELIS INC.,	:	
	:	
and	:	
	:	
NOVELIS CORP.,	:	
	:	
Defendants.	:	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Plaintiff Arconic Inc. (“Arconic”), by and through counsel, hereby submits this memorandum of law in support of Plaintiff’s Motion for Leave to File Amended Complaint.

I. FACTUAL BACKGROUND

After the Special Master issued Report and Recommendation #5, Dkt. 92, and no party objected, Arconic filed its Amended Complaint. Dkt. 106. On April 18, 2018, this Court entered an order to show cause why Arconic’s Amended Complaint should not be stricken. Dkt. 108. On April 24, 2018, Arconic consented to striking the Amended Complaint pending this Court’s decision to adopt, modify, or reject the Special Master’s Report and Recommendation #5. Dkt. 110.

On May 2, 2018, this Court entered an order adopting Report and Recommendation #5. Dkt. 113. This Court simultaneously entered an order granting in part and denying in part the Motion to Dismiss. Dkt. 114. In its Case Management Order, this Court noted the parties shall add new parties on or before May 10, 2018 but “will need to file a motion to amend pleadings.” Dkt. 102.

Arconic now seeks leave to file its Amended Complaint to (1) comply with the directives of Report and Recommendation #5, (2) specifically call out one breach theory of the contract that is already at issue, and (3) add several additional facts that support Arconic's claims.

Novelis will oppose Arconic's Motion in part.

II. ARGUMENT

Leave to amend should be "freely give[n] . . . when justice so requires." Fed R. Civ. P. 15(a)(2). Moreover, the Third Circuit has noted that courts should exercise "strong liberality" in allowing amendments under Rule 15(a), *Heyl & Patterson Int'l, Inc. v. D.F. Rich Housing*, 663 F.2d 419, 425 (3d Cir. 1981), and has "held consistently that leave to amend should be freely granted." *Dole v. Arco Chemical Co.*, 921 F.2d 484, 486 (3d Cir. 1990). A motion to amend should be denied only when (1) the non-moving party can demonstrate undue delay, bad faith, or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party. *Impact Applications, Inc. v. CNS Vital Signs*, No. CIV.A. 13-580, 2013 WL 5936422, at *1–2 (W.D. Pa. Nov. 5, 2013) (Conti, C.J.) (permitting plaintiff to file motion to amend complaint and copy of proposed amended complaint to determine futility). "Prejudice to the nonmoving party is the touchstone for denial of the amendment." *Dole*, 921 F.2d at 488; *U.S. Fire Ins. Co. v. Kelman Bottles*, 538 F. App'x 175, 183–84 (3d Cir. 2013) (finding abuse of discretion to deny motion for leave to amend where there was no undue delay and no "substantial[] prejudice[e]" where party could not identify specific depositions or evidence needed to defend against new claims).

No undue prejudice will result because the newly numbered counts are done pursuant to Report & Recommendation #5 and the additional facts do not change the contours of the case and are done pursuant to Report & Recommendation #5's directive to provide additional factual

grounds in support of the remaining counts and to incorporate by reference the Trade Secret/Confidential Proprietary Information identification chart. Novelis has been on notice of the facts and counts in the Amended Complaint attached as Exhibit 1 to the Motion since its original filing on April 16, 2018. In addition, discovery in this case is in the very early stages and no depositions have been taken.

Nor has there been any undue delay, bad faith, or dilatory motive in this action. Arconic filed its Motion less than a week after this Court granted the order adopting Report & Recommendation #5 and within the deadline provided in the scheduling order to file a motion to amend the pleadings.

III. CONCLUSION

For the reasons set forth above, Arconic respectfully requests that its Motion for Leave to File Amended Complaint be granted and that it be permitted to file an Amended Complaint substantially in the form of Exhibit 1 attached to the Motion.

May 8, 2018

Respectfully submitted,

s/ Julia R. Milewski

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 8, 2018, the foregoing Plaintiff's Memorandum of Law in Support of Motion for Leave to File Amended Complaint was electronically filed and served upon counsel for the Defendants through the Court's ECF system:

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